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From: Jim Quadrini
Sent: Wed 2/15/2017 4:49:28 PM
Subject: BERA Dispute Status

Stephanie,

As requested during the meeting on 2/13, the following presents the NCG's understanding on the status of Newtown Creek BERA items as documented in the 12/22/16 dispute resolution letter. Please forward this to others, as appropriate.

Note this information is subject to change depending on future discussions with EPA and in the event that more information becomes available.

Primary Disputed Items

Schedule

The schedule for submittal of the next draft BERA report is to be determined following completion of the dispute resolution period (currently through 2/23/17)

Reference Areas: Censor stations and Use Individual Reference Areas

EPA is directing that the reference area stations to be censored using a PEC-Q approach as provided to the NCG on 2/3. During the 2/13 meeting, the NCG expressed some concerns over the computation and application of the approach (use of individual metal PEC-Qs rather than an average metal PEC-Q; use of an overall average PEC-Q to evaluate individual stations; inclusion of non-triad stations; a need to re-calculate using updated datasets). EPA will consider NCG's comments and will provide additional information on the PEC-Q approach. EPA will also

provide clarification on use of individual reference areas.

Based on the 2/13 discussion, this item is still under discussion.

Sediment Bioassays: Sediment-Porewater Relationship and Confounding Factors

The NCG sent a technical memorandum to EPA on 2/2 clarifying the BERA approach. During the 2/13 meeting, EPA stated they want the risk characterization step to also include a comparison of the bioassay results to bulk sediment concentrations. The NCG is of the strong opinion that the Phase 2 Work Plan decisions, which were reached after careful discussions with, and the approval of, the agency, recognized that porewater was the more relevant medium to evaluate potential impacts from COPECs. Hence, the Phase 2 program included broad porewater sampling throughout the Study Area.

In addition, EPA stated that a discussion of confounding factors may be appropriate to include in the risk characterization step if the discussion was broadened to include other potential confounding factors in addition to the ones included in the Draft BERA. EPA is finalizing its comments on the 2/2 memorandum and these comments may lead to additional discussions between the parties. The NCG believes a full discussion of confounding factors in the risk characterization is important in light of the strong evidence that toxicity observed at specific stations is not associated with COPECs in porewater.

Based on the 2/13 discussion, the NCG considers this item still under discussion.

10-day Sediment Toxicity Test

This was discussed with EPA during a meeting on 1/11/17. The NCG would like to provide additional comments to EPA before the dispute resolution period ends.

At this time, the NCG considers this item to be under dispute.

Other Items for Dispute

Wildlife Exposure Modifying Factors

During the meeting with EPA on 1/11/17, EPA stated they would like the wildlife baseline risk analyses to include a range of exposure modifying factors (EMFs) in the risk characterization of the report; not confine these analyses to just the uncertainty section. The NCG had responded to EPA's original comments by agreeing to use a range of EMFs in the uncertainty section of the report.

At this time, the NCG considers this item to be under dispute.

Selection of Fish and Wildlife TRVs

The NCG sent a technical memorandum to EPA on 1/20 with additional information on selection of the wildlife and fish TRVs. EPA approved use of the wildlife TRVs in a 2/3 e-mail to the NCG, but requested more information on the tissue TRVs. Additional information on the tissue TRVs was sent to EPA on 2/8. During the 2/13 meeting, EPA indicated this information is still under review.

The NCG considers selection of the wildlife TRVs resolved; tissue TRVs are still under discussion.

White Perch

Use of white perch fillet data in the BERA risk analyses was discussed with EPA on 1/11. In a 1/20 follow-up email, EPA stated that white perch should be treated qualitatively in the BERA through comparison with striped bass fillet data. This was confirmed in a 1/26 meeting with EPA.

The NCG considers this issue resolved.

Additional Responses to be Discussed with EPA

Polychaete- Sediment Regressions

During a meeting with EPA on January 4, the NCG clarified use of the polychaete-sediment regressions in the BERA. The NCG provided this clarification in writing to EPA on 2/2. The NCG wants to determine whether EPA needs further clarification.

At this time, the NCG considers this issue to still be under discussion.

NYSDEC WQS

The use of additional NYSDEC surface water standards was discussed during the 1/11 meeting with EPA. In a follow-up e-mail on 2/7, NYSDEC indicated that NYSDEC water quality standards for the protection of wildlife and for human health based on fish consumption should be considered in the porewater evaluation of the BERA. During the 2/13 meeting, EPA agreed to discuss this further with NYSDEC.

At this time, the NCG is waiting for EPA to clarify NYSDEC comments.

Jim

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